

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1050

Introduced by Assembly Member Ma

February 27, 2009

An act to amend Section 3042 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Child custody: preferences of child.

Existing law requires the family court, if a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, to consider and give due weight to the wishes of the child in making an order granting or modifying custody.

This bill would, *on and after January 1, 2012*, require the family court to consider and give due weight to the wishes of a child in making an order granting or modifying custody or visitation, if the child is of sufficient age and capacity to form an intelligent preference as to custody or visitation. The bill would require the court to permit a child who is 14 years of age or older to address the court regarding custody or visitation, unless the court determines that doing so is not in the child's best interests, and, in that case, the bill would require the court to ~~make~~ *state its reasons for* that finding on the record. The bill would require the court to provide alternative means of obtaining *input from the child*

and other information regarding the child's preferences if the court precludes the calling of ~~a~~ *any* child as a witness. The bill would require the Judicial Council *to*, no later than January 1, 2012, ~~to~~ promulgate a rule of court establishing procedures for the examination of a child witness, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3042 of the Family Code is amended to
2 read:

3 3042. (a) If a child is of sufficient age and capacity to reason
4 so as to form an intelligent preference as to custody or visitation,
5 the court shall consider, and give due weight to, the wishes of the
6 child in making an order granting or modifying custody or
7 visitation.

8 (b) In addition to the requirements of subdivision (b) of Section
9 765 of the Evidence Code, the court shall control the examination
10 of a child witness so as to protect the best interests of the child.

11 (c) If the child is 14 years of age or older and wishes to address
12 the court regarding custody or visitation, the child shall be
13 permitted to do so, unless the court determines that doing so is not
14 in the child's best interests. In that case, the court shall ~~make~~ *state*
15 *its reasons for* that finding on the record.

16 (d) Nothing in this section shall be interpreted to prevent a child
17 who is less than 14 years of age from addressing the court regarding
18 custody or visitation, if the court determines that is appropriate
19 pursuant to the child's best ~~interest~~ *interests*.

20 (e) If the court precludes the calling of ~~a~~ *any* child as a witness,
21 the court shall provide alternative means of obtaining *input from*
22 *the child and other* information regarding the child's preferences.

23 ~~(f) Nothing in this section shall be construed to require a child~~
24 ~~to express to the court his or her preference as to custody or~~
25 ~~visitation.~~

26 ~~(g)~~

27 (f) To assist the court in determining whether ~~a~~ *the* child wishes
28 to express his or her preference ~~as to~~ *or to provide other input*
29 *regarding* custody or visitation to the court, a minor's counsel, an
30 evaluator, an investigator, or a mediator who provides

1 recommendations to the judge pursuant to Section 3183 shall
2 indicate to the judge that the child wishes to address the court, or
3 the judge may make that inquiry in the absence of that request. A
4 party or a party's attorney may also indicate to the judge that the
5 child wishes to address the court or judge.

6 *(g) Nothing in this section shall be construed to require the*
7 *child to express to the court his or her preference or to provide*
8 *other input regarding custody or visitation.*

9 *(h) The Judicial Council shall, no later than January 1, 2012,*
10 *promulgate a rule of court establishing procedures for the*
11 *examination of a child witness, and include guidelines on methods*
12 *other than direct testimony for obtaining information from a child*
13 *on his or her preferences; or other input from the child regarding*
14 *custody or visitation.*

15 *(i) The changes made to subdivisions (a) to (g), inclusive, by*
16 *the act adding this subdivision shall become operative on January*
17 *1, 2012.*